

## Message Text

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ACTION TRSE-00

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FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC 2012

C O N F I D E N T I A L JAKARTA 5134

E.O. 11652: GDS

TAGS: EFIN, ID

SUBJ: INDONESIAN-U.S. TAX CONVENTION

REF: A) STATE 78854 B) JAKARTA 4767

1. SUMMARY. IN MEETING APRIL 22 FINANCE AND FOREIGN MINISTRY OFFICIALS ASKED RECONSIDERATION ARTICLE 24 (NONDISCRIMINATION), PARAGRAPH (4) OF DRAFT TAX CONVENTION. THEY REQUESTED EXPLANATION ARTICLE 7 (SOURCE OF INCOME) PARAGRAPH (7), AND INFORMATION ABOUT POSSIBLE U.S. LEGISLATION THAT WOULD CHANGE U.S. TAX OBLIGATIONS OF FOREIGN BRANCHES AND SUBSIDIARIES OF AMERICAN COMPANIES. THEY EXPRESSED APPRECIATION FOR BACKGROUND INFORMATION REF A, AS USEFUL IN DEFENDING DECISION TO ACCEPT ABSENCE OF TAX-SPARING PROVISION IN TREATY WITH U.S. ACTION REQUESTED : WOULD APPRECIATE INSTRUCTIONS RE ACCEPTABILITY INDONESIAN REQUEST REGARDING ARTICLE 24, ADVICE REGARDING ARTICLES 7 AND 30 (ENTRY INTO FORCE), AND INFORMATION REQUESTED PARAS 4 AND 5 BELOW.  
END SUMMARY.

2. RE ARTICLE 24: MEETING DISCLOSED THAT, IN WAKE OF JANUARY 15 DISTURBANCES AND IN ATMOSPHERE OF RATHER HASTY ACTIONS WHICH IN FACT DO DISCRIMINATE AGAINST FOREIGNERS, FINANCE MINISTRY NO LONGER WISHES TO PROPOSE  
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FOR CABINET CONSIDERATION A TREATY WHICH COMMITS GOI TO

NONDISCRIMINATION IN RESPECT TO "TAXES OF EVERY KIND IMPOSED AT THE NATIONAL LEVEL." OFFICIALS CITED RECENT CABINET DECISION (NOT YET IMPLEMENTED) TO IMPOSE \$100 MONTHLY HEAD TAX ON FOREIGNERS EMPLOYED IN INDONESIA AS EXAMPLE OF GOVERNING SPIRIT AT THAT LEVEL, WHICH BUREAUCRATS OBLIGED TO RECOGNIZE. THEY STATED THAT GOI GIVES NO NONDISCRIMINATION ASSURANCES EQUAL TO THOSE IN U.S. DRAFT TO ANY TAX-TREATY PARTNER: DUTCH TREATY CONTAINS NO RPT NO NONDISCRIMINATION CLAUSE; BELGIAN AND U.K. TREATIES (SIGNED BUT NOT RATIFIED) CONTAIN NONDISCRIMINATION CLAUSE LIMITED TO TAXES AS OTHER ARTICLE--E.G., INCOME AND COMPANY TAXES PLUS INTEREST, DIVIDEND, AND ROYALTY TAXES. INDONESIANS STATED FIRMLY THAT NO ASSURANCES LIKE THOSE IN U.S. DRAFT WOULD FIGURE IN ANY FUTURE TAX TREATY. THEY "STRONGLY PROPOSE" ONE OF THESE ALTERNATIVES:

- A. DELETE PARAGRAPH (4);
- B. LET PARAGRAPH (4) READ, "FOR PURPOSES OF THIS ARTICLE THE TERM 'TAXES' MEANS TAXES WHICH ARE THE SUBJECT OF THIS CONVENTION." EMBASSY E/CM COUNSELOR RAISED ISSUE WITH TAX DIRECTOR GENERAL SUTADI WHO PREPARED TO ACCEPT ALTERNATIVE B.

3. INDONESIAN REQUESTED EXPLANATION OF ARTICLE 7 (7); AND SPECIFICALLY THE EXPRESSION, "ONLY IF SUCH PROPERTY IS SOLD IN THAT CONTRACTING STATE." WHAT IS ITS INTENT? WHAT ACTION IN THE VARIOUS STEPS LEADING TO EXCHANGE OF OWNERSHIP AMOUNTS TO SALE WITHIN THE MEANING OF THIS PARAGRAPH? HOW DOES APPLICATION OF THIS PARAGRAPH TO TRANSFER OF TANGIBLE PROPERTY COMPARE WITH THAT OF NO. (4) INsofar AS THE LATTER ALSO RELATES TO SALE?

4. INDONESIANS AGREE WITH US THAT IT IS BETTER TO USE JANUARY 1, 1974, IN ARTICLE 30, ENTRY INTO FORCE. HOWEVER, RESPONDING TO THEIR EVIDENTLY STRONG IF RATHER INARTICULATE CONCERN ABOUT POSSIBLE FUTURE DELAYS, WE WONDER WHETHER DEPARTMENT CAN FURNISH US WITH ACCEPTABLE ALTERNATIVE LANGUAGE AVOIDING MENTION OF A DATE CERTAIN, JUST TO HOLD IN RESERVE.

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5. INDONESIANS ALSO ASKED US TO INQUIRE WHAT IF ANY SPECIFIC PROVISIONS ARE CURRENTLY BEFORE THE U.S. HOUSE OF REPRESENTATIVES PROPOSING CHANGES IN TAX TREATMENT OF INCOME EARNED BY FOREIGN SUBSIDIARIES, AND BRANCHES OF U.S. CORPORATIONS. WHAT ARE STATUS AND OUTLOOK SUCH MEASURES?

6. TAX OFFICIALS EXPRESS RESERVATIONS ABOUT PROSPECTS FOR CABINET APPROVAL OF TAX CONVENTION CONTAINING NO TAX SPARING PROVISION. OUR GUESS, HOWEVER, IS THAT FINANCE MINISTRY INTENDS TO PUSH THIS THROUGH AND WILL SUCCEED. THEY EXPRESSED APPRECIATION FOR BACKGROUND MATERIAL DEMONSTRATING THAT U.S. TREATIES WITH OTHER DEVELOPING COUNTRIES DO NOT PROVIDE FOR TAX SPARING.

7. WHEN ECONOMIC POLICY TRENDS HERE INCREASINGLY RISK CONFLICT WITH VARIOUS PROVISIONS OF AGREEMENT, OUR TACTICAL INSTINCTS ARE TO ACCEDE TO ALTERNATIVE B PARA 2 ABOVE ON NONDISCRIMINATION POINT IF FINANCE AND FOREIGN AFFAIRS WILL AGREE TO MAKE EVERY EFFORT TO PUSH FOR EARLY APPROVAL BY STATE SECRETARIAT AND CABINET WITHOUT FURTHER REVISION. FOR U.S. FIRMS, GREATEST VALUE OF NONDISCRIMINATION PROVISION IS IN ANY CASE ITS APPLICATION TO TAXES MENTIONED IN ARTICLE 2, TAXES COVERED. BELIEVE WE RISK LOSING MORE THROUGH FURTHER DELAY THAN IN CONCESSION ON THIS POINT.

8. ACTION REQUESTED: AS STATED PARA 1 ABOVE.

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## Message Attributes

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